

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDRAUS McCLOUD,

Petitioner,

Civil No. 2:13-cv-13572

Hon. Gershwin A. Drain

DUNCAN MacLAREN,

Respondent.

**OPINION AND ORDER DENYING PETITIONER'S MOTION FOR SUMMARY
JUDGMENT [# 14]**

This matter is before the Court on Petitioner's Motion for Summary Judgment concerning his pending petition for a writ of habeas corpus. Petitioner filed his habeas petition on August 20, 2013. Respondent filed an answer to the petition on December 13, 2013. Petitioner has now filed the instant Motion, asserting that based on the arguments made in the petition and the answer, he is entitled to judgment in his favor.

Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper:

If the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). The Court has yet to review the state court materials filed in this case. At this time, therefore, the Court cannot conclude that there is no genuine issue of material fact or that Petitioner is entitled to judgment as a matter of law. Furthermore, a default judgment is unavailable in a habeas corpus proceeding. See *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). The court will address the merits of the case in a forthcoming opinion. Accordingly,

IT IS ORDERED that Petitioner's Motion for Summary Judgment [# 14] is **DENIED**.

Dated: February 10, 2014

/s/Gershwin A Drain
Honorable Gershwin A. Drain
United States District Judge